

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20577

IN THE MATTER OF THE CLAIM OF

MARGARET CASEY FOWLER

Claim No. CU-3334

Decision No. CU 5753

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$377,500.00, was presented by MARGARET CASEY FOWLER based upon the loss of certain real and personal property in Cuba. Claimant has been a national of the United States since birth.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term "property" means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Claimant asserts the loss of 1/2 interests in the following properties:

Land at Country Club Park, Havana	\$ 50,000.00
House on above land	100,000.00
Personal property in house	45,000.00
Stock in Cia. Agricola El Guajiro	300,000.00
Stock in Cuba Railroad Company	30,000.00
Mortgages	<u>230,000.00</u>
	<u>\$755,000.00</u>
1/2 claimed	<u><u>\$377,500.00</u></u>

The evidence includes reports from abroad; affidavits from individuals with personal knowledge of the facts; photographs of the property at Country Club Park; affidavits and statements from claimant and her husband, a nonnational of the United States; and copies of stock certificates. The record shows that some of the properties claimed herein were acquired by claimant's husband through inheritance, and that other items were purchased by claimant and her husband.

Claimant asserts a 1/2 interest in all of the above listed property. She states that upon her marriage, apparently in 1951, she and her husband agreed that their respective properties should remain their separate properties; but that in 1956 they entered into another agreement that all properties should be deemed jointly owned.

The record includes an affidavit, dated April 28, 1967, from claimant's husband in which he states "that since the year of 1956 all properties and business that were bought or transacted by either of us was always done on a fifty per cent basis." That this agreement between claimant and her husband was to take effect prospectively as of 1956 is further corroborated by a letter of February 9, 1970 from claimant's husband.

Pursuant to the community property laws of Cuba, all properties acquired by a husband and wife during coverture, except properties acquired by inheritance or gift, are jointly owned by both spouses. (See Claim of Robert L. Cheaney and Marjorie L. Cheaney, Claim No. CU-0915.)

Upon consideration of the entire record, the Commission finds that claimant and her husband owned interests in certain real and personal properties in Cuba, discussed in detail below.

House and Lot at Country Club Park

A report from abroad recites that claimant's husband acquired on January 16, 1953 title to certain land in Marianao, Havana, Cuba, known as Country Club Park. It further appears from that report and from the letter of February 9, 1970 written by claimant's husband that said property was purchased with inherited funds, and was subject to the rule of "Capitulaciones Matrimoniales" providing for "absolute separation of properties." Since the later revised agreement between claimant and her husband did not take effect until 1956 and in the absence of evidence to the contrary, the Commission finds that claimant owned no interest in the land. Accordingly, the portion of the claim based upon land in Country Club Park is denied.

The evidence establishes and the Commission finds that claimant and her husband jointly engaged the services of a building contractor and caused a house to be built on the Country Club Park lot as their residence. An affidavit, dated August 27, 1968, from a member of the Cuban contracting firm indicates that claimant and her husband jointly paid for the construction of the house which was completed in January 1954.

On the basis of the entire record, the Commission finds that claimant owned a 1/2 interest in the house at Country Club Park.

Claimant states that the improved real property at Country Club Park was taken by the Government of Cuba pursuant to the Urban Reform Law of October 14, 1960.

The Commission finds that the property was within the purview of the Urban Reform Law, published in the Cuban Official Gazette on October 14, 1960. In the absence of evidence to the contrary, the Commission finds that the house and lot were taken by the Government of Cuba on October 14, 1960. (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39.)

The record includes an affidavit, dated August 27, 1968, from a senior partner of the firm of architects and engineers which constructed the house, attesting to the fact that the total cost of construction was \$101,078.50. Claimant's brother, a civil engineer who had visited claimant in 1957 and had seen the property, states in an affidavit of August 20, 1968 that the building had a value of at least \$100,000.00. The record also contains several affidavits from friends and relatives, including that of the former Ambassador of the United States to Cuba, corroborating claimant's valuation of the house and lot at Country Club Park, Havana on the basis of personal knowledge of the property.

Upon consideration of the entire record, the Commission finds that claimant's valuations are fair and reasonable. Accordingly, the Commission finds that the value of the house apart from the lot at Country Club Park on October 14, 1960, the date of loss, was \$100,000.00. Therefore, claimant sustained a loss in the amount of \$50,000.00 for her 1/2 interest in the house.

Personal Property in House

The record shows and the Commission finds that claimant and her husband furnished their home in Country Club Park with furniture, art objects, antiques, paintings and other items of personal property customarily found in residences; and that they also owned 3 automobiles maintained on the premises.

The Commission further finds that said items of personal property, including the automobiles, were taken by the Government of Cuba on October 14, 1960, when the real property was taken.

The evidence includes itemized lists of the items of personal property certified by claimant; and affidavits from interior decorators corroborating claimant's valuations. One of the interior decorators stated that she had visited claimant's home in Marianao, Cuba many times.

An examination of the lists of personal property indicates that some of the items therein are subject to depreciation. One of claimant's lists shows that she reduced the values of some of the items by reason of depreciation. The Commission finds that the items of personal property should be depreciated as follows:

Furniture, glassware, chinaware, major electric appliances, shotguns and sprinkler system -	5% per year
Camera, movie equipment and rugs -	10% per year
Clothing and household linens -	20% per year
Automobiles -	15% per year

The Commission finds that certain items of personal property should not be depreciated; namely, antiques, objects of art, paintings, portraits, silver, and new Italian linen never used.

Accordingly, the Commission finds that the items of personal property had the following values on October 14, 1960, the date of loss:

Glassware depreciated at 5% per year for 8 years 60% of \$500.00 -	\$ 300.00
Chinaware and air conditioner depreciated at 5% per year for 7 years 65% of \$900.00 -	585.00

Refrigerator, freezer, stove, sink combination, washer and dryer, shotgun and sprinkler system depreciated at 5% per year for 6 years 70% of \$5,700.00	-	\$ 3,990.00
Furniture depreciated at 5% per year for 5 years 75% of \$7,350.00	-	5,512.50
Furniture depreciated at 5% per year for 4 years 80% of \$1,400.00	-	1,120.00
Shotgun depreciated at 5% per year for 1 year 95% of \$175.00	-	166.25
Rug depreciated at 10% per year for 6 years 40% of \$700.00	-	280.00
Rug depreciated at 10% per year for 5 years 50% of \$175.00	-	87.50
Camera and movie equipment depreciated at 10% per year for 2 years 80% of \$1,400.00	-	1,120.00
Household linens - residual value	-	60.00
Claimant's clothing depreciated at 20% per year for 2-1/2 years 50% of \$1,500.00	-	750.00
Chevrolet and MGA depreciated at 15% per year for 2 years 70% of \$6,000.00	-	4,200.00
Jeep depreciated at 15% per year for 4 years 40% of \$2,000.00	-	800.00
Antiques, objects of art, paintings, portraits, silver and Italian linen	-	<u>18,285.00</u>
Total		<u>\$37,256.25</u>

No amount is being allowed for clothing of claimant's husband because claimant owned no interest therein. Accordingly, the portion of the claim based upon this item of property is denied.

Therefore, the value of claimant's interest was equivalent to 1/2 of the above amount, except that she is entitled to the full value of her clothing, and thus her loss amounted to \$19,003.13.

Cia. Agricola El Guajiro

The record includes a report from abroad and other evidence which establish that claimant's husband inherited a 50% stock interest in Cia. Agricola El Guajiro, a Cuban corporation. The other 50% stock interest was acquired through inheritance by two sisters of claimant's husband. It further appears from the evidence of record that in 1958 claimant and her husband jointly purchased the other 50% stock interest from the two sisters.

Based upon the evidence of record, the Commission finds that claimant owned a 1/4 stock interest in the Cuban corporation.

Since Cia. Agricola El Guajiro was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia, or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. In this type of situation, it has been held that an American stockholder is entitled to file a claim for the value of his ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0130, 1967 FCSC Ann. Rep. 33.)

On December 6, 1961, the Cuban Government published in its Official Gazette its Law 989, which effected the confiscation of all assets, personal property and other rights of persons who had left the country. The Commission finds that this law applied to claimant and her husband who had left

Cuba prior to that date, and that their stock interests in the Cuban corporation were taken by the Government of Cuba on December 6, 1961 pursuant to Law 989. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

Claimant has submitted a stock certificate indicating that as of November 3, 1963, she was the owner of 600 shares of stock of the Cuban corporation constituting all of its outstanding capital stock. The purpose of that submission is to support claimant's assertion that she owned a 1/2 interest in the Cuban corporation since the stock was issued in 1963 subsequent to the revised agreement of 1956 between claimant and her husband.

It is noted, however, that in 1963 claimant's stock interest in the Cuban corporation had already been taken by Cuba pursuant to Law 989 of December 6, 1961, as indicated above. Since the other stockholder, claimant's husband, was a nonnational of the United States on the date of loss, he could only have assigned to claimant any claim he had against the Government of Cuba.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Commission finds that the portion of the claim based upon the stock interest in the Cuban corporation held by claimant's husband was owned by a nonnational of the United States on the date of loss. Accordingly, this portion of the claim is denied. (See Claim of Sigridur Einarsdottir, Claim No. CU-0728, 25 FCSC Semiann. Rep. 45 [July-Dec. 1966].)

Affidavits from the two sisters of claimant's husband and from the former attorney of claimant and her husband while in Cuba indicate that the corporation owned about 72 caballerias of land, a caballeria being equivalent to 33.162 acres. The record shows that the land was used for the production of sugar cane and tobacco, and was situated in Cumanayagua, Las Villas Province, Cuba. It further appears from the evidence of record that the Cuban corporation's sole asset was the land which was improved by structures for aging the tobacco and for housing the resident workers. The property was not encumbered by any liens. The corporation had no liabilities.

On the basis of the entire record, the Commission finds that claimant's valuation of the Cuban corporation is fair and reasonable. Accordingly, the Commission finds that the value of the Cuban corporation on December 6, 1961, the date of loss, was \$300,000.00. Therefore, claimant sustained a loss in the amount of \$75,000.00 for her 1/4 stock interest.

Cuba Railroad Company

On the basis of the evidence of record, including copies of stock certificates, the Commission finds that claimant and her husband each owned a 1/2 interest in 300 shares of preferred stock in the Cuba Railroad Company.

In our decision entitled the Claim of Irwin Nack and Ethel Nack (Claim No. CU-1960 which we incorporate herein by reference), we held that the properties owned by the Cuba Railroad Company were nationalized or otherwise taken by the Government of Cuba on October 13, 1960, and that this type of claim is allowable to an American national under the facts and conditions set forth therein. We need not again detail here the reasons or the method used in determining the value per preferred share of \$100.00.

Based on the evidence of record in the instant case, the Commission finds that claimant comes within the terms of the Nack decision; and that as the owner of a 1/2 interest in 300 shares of preferred stock of the Cuba Railroad Company, she sustained a loss in the amount of \$15,000.00 within

the meaning of Title V of the Act.

Mortgages

The record includes reports from abroad; affidavits from partners in a former Cuban real estate firm which transacted business with claimant's husband; and statements from claimant and her husband. On the basis of the entire record, the Commission finds that claimant's husband owned certain mortgages on improved real property in Havana Province, Cuba. All of the mortgages were issued in favor of claimant's husband and were subject to the rule of "Capitulaciones Matrimoniales." In the absence of evidence to the contrary, the Commission finds that claimant owned no interest in any of those mortgages. Accordingly, the portion of the claim based upon mortgages is denied.

Recapitulation

Claimant's losses are summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
House	October 14, 1960	\$50,000.00
Personal effects, including automobiles	October 14, 1960	19,003.13
Cia. Agricola El Guajiro stock	December 6, 1961	75,000.00
Cuba Railroad Company stock	October 13, 1960	<u>15,000.00</u>
	Total	<u>\$159,003.13</u>

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered as follows:

<u>From</u>	<u>On</u>
October 13, 1960	\$15,000.00
October 14, 1960	69,003.13
December 6, 1961	<u>75,000.00</u>
Total	<u>\$159,003.13</u>

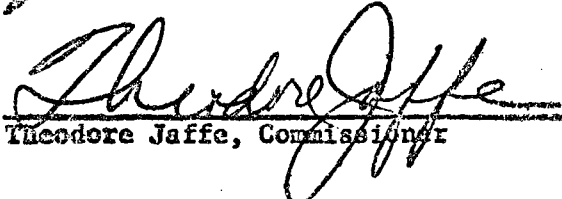
CERTIFICATION OF LOSS

The Commission certifies that MARGARET CASEY FOWLER suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Fifty-nine Thousand Three Dollars and Thirteen Cents (\$159,003.13) with interest at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

AIR 19 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner


Sidney Freidberg, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. §531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 [1967].)